

GEORGE BECKMAN,	)	
	)	
Plaintiff	)	Civil Action No.:
	)	
v.	)	COMPLAINT AND DEMAND FOR JURY TRIAL
	)	
NCO FINANCIAL SYSTEMS, INC.,	)	
	)	(Unlawful Debt Collection Practices)
Defendant	)	

GEORGE BECKMAN ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices, and under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA").

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

**PARTIES**

6. Plaintiff is a natural person residing in Ridley Park, Pennsylvania, 19078.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## **THE FAIR DEBT COLLECTION PRACTICES ACT**

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. *See* 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

1        12. In particular, the FDCPA broadly enumerates several practices considered  
2 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
3 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
4 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
5 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
6 collector may not use any false, deceptive, or misleading representation or means in connection  
7 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
8 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
9 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
10 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
11 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
12 connection with the collection of a debt.  
13

14        13. In enacting the FDCPA, the United States Congress found that “[t]here is  
15 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
16 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
17 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
18 additionally found existing laws and procedures for redressing debt collection injuries to be  
19 inadequate to protect consumers. 15 U.S.C. § 1692b.  
20

21        14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
22 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
23 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
24 collection practices are not competitively disadvantaged, and to promote consistent State action  
25 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

1        15.     The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
2 Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer  
3 need not show intentional conduct by the debt collector to be entitled to damages.” Russell v.  
4 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
5 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status  
6 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

7        16.     The FDCPA is a remedial statute, and therefore must be construed liberally in  
8 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
9 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
10 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the  
11 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
12 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
13 2002).

14        17.     The FDCPA is to be interpreted in accordance with the “least sophisticated”  
15 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
16 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
17 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for  
18 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
19 and the fact that a false statement may be obviously false to those who are trained and  
20 experienced does not change its character, nor take away its power to deceive others less  
21 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it  
22 ensures protection of all consumers, even naive and trusting, against deceptive collection  
23  
24  
25

1 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
2 collection notices. Clomon, 988 F.2d at 1318.

### 4 THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

5 18. In 1991, Congress enacted the TCPA, in response to a growing number of  
6 consumer complaints regarding certain telemarketing practices.

7 19. The TCPA regulates, among other things, the use of automated telephone  
8 equipment, or "autodialers." Specifically, the plain language of section 227(b)(1)(B) prohibits  
9 the use of autodialers to make any call to a residential telephone line in the absence of an  
10 emergency or the prior express consent of the called party.

11 20. According to findings by the Federal Communication Commission ("FCC"), the  
12 agency Congress vested with authority to issue regulations implementing the TCPA, such calls  
13 are prohibited because, as Congress found, automated or prerecorded telephone calls are a  
14 greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly  
15 and inconvenient.  
16

### 18 FACTUAL ALLEGATIONS

19 21. At all relevant times, Defendant attempted to collect an alleged debt originally  
20 owed by Plaintiff to Ridley Park Ambulance Co.  
21

22 22. The alleged debt at issue arose out of transactions which were primarily for  
23 personal, family, or household purposes.

24 23. Beginning in or around March of 2010 and continuing to May 25, 2010,  
25 Defendant, its agents, employees, and servants, engaged in debt collection activities seeking

1 payment from Plaintiff.

2 24. Defendant and its employees identified as "Eric Preston" and "Melanie Feifer,"  
3 harassed Plaintiff in an attempt to collect the alleged debt.

4 25. Defendant, its employees and servants harassed Plaintiff by making continuous  
5 calls to his home telephone number.

6 26. Defendant placed repeated calls to Plaintiff's telephone almost every day, causing  
7 Plaintiff to receive, at times, more than twenty (20) collection calls a month.

8 27. Specifically, Plaintiff received telephone calls and voice messages from  
9 Defendant on a number of occasions including but not limited to, March 24, 2010; April 9,  
10 2010; May 3, 2010; May 12, 2010; May 17, 2010; May 26, 2010 and May 27, 2010, from the  
11 following phone numbers (877) 843-7429, (866) 870-8316, (866) 256-9096, (866) 825-4934.  
12 The undersigned has confirmed that the number belongs to Defendant.  
13

14 28. The Plaintiff received so many telephone calls from Defendant between March  
15 and May of 2010 that he was forced to turn off his telephone ringer.

16 29. Further, when contacting Plaintiff on his telephone, upon information and belief,  
17 defendant used an automatic telephone dialing system or pre-recorded or artificial voice.

18 30. Plaintiff did not expressly consent to Defendant's placement of telephone calls to  
19 his telephone by the use of an automatic telephone dialing system or a pre-recorded or artificial  
20 voice prior to Defendant's placement of the calls.  
21

22 31. None of Defendant's telephone calls placed to Plaintiff were for "emergency  
23 purposes," as specified in 47 U.S.C. §227(b)(1)(A).

24 32. Defendant's actions in attempting to collect the alleged debt were harassing,  
25 abusive and highly deceptive.

**COUNT I**  
**DEFENDANT VIOLATED**  
**THE FAIR DEBT COLLECTION PRACTICES ACT**

35. In its actions to collect a debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated the FDCPA generally;
- b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- c. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;
- d. Defendant violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- e. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

**COUNT II**  
**DEFENDANT VIOLATED THE**  
**TELEPHONE CONSUMER PROTECTION ACT**

36. Plaintiff hereby incorporates all facts and allegations specified in all preceding paragraphs, by reference as if fully set forth at length.

37. Section 227(b)(3)(A) of the Act authorizes a private cause of action for a person or entity to bring in an appropriate court of that state "an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation."

1        38. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person  
2 or entity to bring in an appropriate court of that state "an action to recover for actual monetary  
3 loss from such a violation, or to receive \$500 in damages for each such violation, whichever is  
4 greater."

5        39. Defendants repeatedly placed calls to Plaintiff's home telephone despite.

6        40. Defendants' conduct violated § 227(b)(1)(B) of the TCPA by making any call  
7 using any automatic telephone dialing system or an artificial prerecorded voice to any residential  
8 telephone line without the prior express consent of the called party, unless the call is initiated for  
9 emergency purposes.

10       41. The Act also authorizes the Court, in its discretion, to award up to three (3) times  
11 the actual damages sustained for violations.

12  
13       WHEREFORE, Plaintiff, GEORGE BECKMAN, respectfully prays for a judgment as  
14 follows:

- 15  
16       a. All actual compensatory damages suffered pursuant to 15 U.S.C. §  
17       1692k(a)(1);  
18       b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant  
19       to 15 U.S.C. § 1692k(a)(2)(A);  
20       c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
21       costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and  
22       d. Statutory damages of \$500 for each violation of the TCPA, pursuant to 47  
23       U.S.C. §227(c)(5)(B); and  
24       e. Any other relief deemed appropriate by this Honorable Court.  
25



**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, GEORGE BECKMAN, demands a jury trial in  
this case.

DATED: 05/20/11

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

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